

## § 301.6712-1

a tax shelter which is required to be included on a list under section 6112. See A-22 of § 301.6112-1T.

(Secs. 6112 and 7805, Internal Revenue Code of 1954 (98 Stat. 681; 68A Stat. 917; 26 U.S.C. 6112 and 7805))

[T.D. 7969, 49 FR 34204, Aug. 29, 1984]

### § 301.6712-1 Failure to disclose treaty-based return positions.

(a) *Penalty imposed.* A taxpayer who fails in a material way to disclose one or more positions taken for a taxable year, as required by section 6114 and the regulations thereunder, is subject to a separate penalty for each failure to disclose a position taken with respect to each separate payment or separate income item in the amount of—

(1) For a corporation taxable as such under the Code \$10,000; or

(2) For all other taxpayers, \$1,000.

The penalty imposed by this section may be imposed more than once for a single taxable year if a taxpayer has failed to disclose one or more positions taken with respect to more than one separate payment or separate income item and may be imposed in addition to any other penalty imposed by law. For this purpose, separate payments or income items of the same type (*e.g.*, interest payments) received from the same ultimate payor (*e.g.*, the obligor on the note) will be treated as separate payments or income items (and not aggregated). However, for purposes of determining the number of separate penalties to be imposed under this section, the District Director shall have the discretion to aggregate separate payments or income items, in whole or in part, in accordance with the rules for aggregation of such items for purposes of reporting, as described in § 301.6114-1(d).

(b) *Penalty waived.* Pursuant to the authority contained in section 6712(b) of the Code, the penalty imposed by paragraph (a) of this section may be waived, in whole or in part, if it is established to the satisfaction of the Assistant Commissioner (International), the District Director or the Director of the Internal Revenue Service Center that the taxpayer's failure to disclose the required information was not due to willful neglect. An affirmative show-

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ing of lack of willful neglect must be made in the form of a written statement that sets forth all the facts alleged to show lack of willful neglect and contains a declaration by such person that the statement is made under the penalties of perjury.

(c) *Manner of payment.* The penalty set forth in paragraph (a) of this section shall be paid in the same manner as tax upon the issuance of a notice and demand thereof.

(d) *Effective date.* This section is effective for taxable years of the taxpayer for which the due date for filing returns (without extension) occurs after December 31, 1988.

[T.D. 8292, 55 FR 9441, Mar. 14, 1990]

### § 301.6721-0 Table of Contents.

In order to facilitate the use of §§ 301.6721-1 through 6724-1, this § 301.6721-0 lists the paragraph headings contained in these sections.

#### § 301.6721-1 Failure to file correct information returns.

- (a) Imposition of penalty.
  - (1) General rule.
  - (2) Failures subject to the penalty.
- (b) Reduction in the penalty when a correction is made within specified periods.
  - (1) Correction within 30 days.
  - (2) Correction after 30 days but on or before August 1.
  - (3) Required filing date defined.
  - (4) Penalty amount for return with multiple failures.
  - (5) Examples.
  - (6) Applications to returns not due on February 28 or March 15.
- (c) Exception for inconsequential errors or omissions.
  - (1) In General.
  - (2) Errors or omissions that are never inconsequential.
  - (3) Examples.
  - (d) Exception for a *de minimis* number of failures.
    - (1) Requirements.
    - (2) Calculation of the *de minimis* exception.
    - (3) Examples.
    - (4) Nonapplication to returns not due on February 28 or March 15.
  - (e) Lower limitations on the \$250,000 maximum penalty amount with respect to persons with gross receipts of not more than \$5,000,000.
    - (1) In general.
    - (2) Gross receipts test.
  - (f) Higher penalty for intentional disregard of requirement to file timely correct information returns.